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November 16 , 1979

Mr. Randolph E. Soranson
Acting Chairman
Housing Finance Review Board
Room 505, Executive Tower
1700 West Washington
Phoenix, AZ 85007

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ARIZONA ATTORNEY GENERAL

Re: I79-272 (R79-293)

Dear Mr. Soranson:

This letter is in response to your memorandum to this office dated October 25, 1979, in which you asked for our opinion on the following two questions concerning the Housing Finance Review Board established by A.R.S. § 9-1174:

1. If the Board members have been nominated by the Governor pursuant to A.R.S. § 38-211 following the end of the 1979 regular legislative session, will the Board's acts be invalidated solely because the Board members have not yet been confirmed by the Senate?

2. Does the statement in A.R.S. § 9-1174.A that Board members "are not eligible to receive compensation" preclude them from being paid amounts for per diem subsistence and mileage?

The answer to both questions is no.

The Housing Finance Review Board is a five member board established by Section 5 of Chapter 214, Laws 1979, to review and approve or disapprove general plans submitted by industrial development authorities for the sale of revenue bonds to finance certain single family dwelling units. A.R.S. § 9-1174.A, which is included in Section 5, requires the five board members to be appointed by the Governor pursuant to A.R.S. § 38-211.

Mr. Randolph E. Soranson
November 16, 1979

Page 2

The latter section sets forth the procedures for gubernatorial appointments which require Senate confirmation. Although the procedures differ depending upon whether the Legislature is in regular session as it applies to your question, the section specifically provides that

. . . a nominee for office shall have the full authority to perform and shall begin to discharge the duties of such office immediately upon being nominated by the governor and subject to termination of such authority in the event of rejection of the nomination by the senate.

A.R.S. § 38-211.D.

Thus, under this provision, each nominee to the Housing Finance Review Board has full authority to act pending Senate confirmation.^{1/}

You point out, in your second question, that A.R.S. § 9-1174.A states that board members "are not eligible to receive compensation." You ask whether the Legislature, by such language, intended to preclude Board members from being paid per diem subsistence allowances and transportation costs.

The statutes pertaining to compensation and travel expenses clearly distinguish between them. The word "compensation" specifically is used in A.R.S. § 38-611,^{2/} which is a part of

1. Should the Senate reject a nominee, the nominee's authority is terminated immediately under A.R.S. § 38-211.D, and A.R.S. § 38-211.B directs the Governor then to nominate another person within 60 days. In no event may a nominee serve longer than one year after nomination without Senate confirmation. A.R.S. § 38-211.B.

2. Subsection D of A.R.S. § 38-611 states:

Except as otherwise provided by statute or specific legislative appropriation, members of boards, commissions, councils or advisory committees who are authorized by law to receive compensation may receive compensation at the rate of not to exceed thirty dollars for each day engaged in the service of such board, commission, council or advisory committee. (Emphasis added.)

Title 38, Chapter 4, Article 1, entitled "Salaries". It is obvious that travel expenses are not included within the word "compensation" as so used. In contrast, travel expenses are covered by Title 38, Chapter 4, Article 2, entitled "Travel Expenses". Included in Article 2 are transportation expenses (A.R.S. § 38-623)^{3/} and the per diem subsistence allowance (A.R.S. § 38-624).^{4/} Moreover, the provisions of Article 2 apply to members of state boards, commissions and agencies when traveling on necessary public business away from designated posts of duty.^{5/}

The Arizona Supreme Court also has recognized the difference between compensation and travel expenses. In Earhart v. Frohmler, 65 Ariz. 221, 178 P.2d 436 (1947), a statute which provided for the reimbursement of legislators' travel expenses over and above the legislators' established constitutional compensation was challenged as violative of the Arizona constitutional provisions which established that compensation and which prohibited its increase during the legislative term. The challenge was rejected by the court as follows:

We do not believe these contentions of constitutional violation can be upheld. When the State repays the legislators and their employees for personal expenses, this does not constitute additional compensation but is merely a reimbursement for actual cash outlays necessarily incurred for subsistence while away from home and in the performance of duty.^{6/}

65 Ariz. at 226.

3. Transportation expenses include the costs of air fare, automobile expenses and the like. A.R.S. § 38-623.

4. The per diem subsistence allowance covers payments for "meals, lodging and other incidental expenses relating to travel except transportation and communication expenses." A.R.S. § 38-624.C.

5. The "designated post of duty" of a member of a state board who is not a full time employee is the member's place of residence. A.R.S. § 38-621.B.

6. The court further indicated that "compensation" ordinarily means pay for services rendered, and that the Arizona Constitution uses the term "compensation" to mean salary. 65 Ariz. at 226.

Mr. Randolph E. Soranson
November 16, 1979
Page 4

In summary, we think the Legislature used the word "compensation" in A.R.S. § 9-1174.A as it is used in A.R.S. § 38-611⁷ and in the Arizona Constitution. We therefore conclude that A.R.S. § 9-1174.A does not preclude the payment to Board members of transportation costs or per diem subsistence allowances.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

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7. We recognize that, under our interpretation of the word "compensation" in A.R.S. § 9-1174.A, the Legislature need not have prohibited its payment. This is so because A.R.S. § 38-611 directs the payment of compensation only when it has been "authorized by law." It therefore may be argued, in order to give some meaning to the A.R.S. § 9-1174.A prohibition against the payment of compensation, that the prohibition was aimed at those expenses which otherwise would be paid under Title 38, Chapter 4, Article 2. While this argument is logical, we think it disregards the legislative intent. We are unwilling to conclude, without a clearer legislative direction, that persons gratuitously performing services for the State are also to bear the costs of performing such services.